

48A C.J.S. Judges § 184

Corpus Juris Secundum | August 2023 Update

Judges

Joseph Bassano, J.D.; Khara Singer-Mack, J.D.; Thomas Muskus, J.D; Karl Oakes, J.D. and Jeffrey J. Shampo, J.D.

VI. Authority, Powers, and Duties

H. Particular Judges

1. Successor Judges

b. Authority to Reconsider and Change Predecessor's Decision

§ 184. View that successor lacks authority; exceptions

[Topic Summary](#) | [References](#) | [Correlation Table](#)

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There is authority holding that a successor judge may not substitute his or her judgment for that of the original trial judge in the absence of mistake or fraud or intervening changes in the facts or the law that clearly warrant a new look at the question.

Although it has been held that a successor judge may reconsider and set aside a predecessor judge's rulings or decisions in a case,¹ contrary authority holds that a successor judge may not substitute his or her judgment for that of the original trial judge² in the absence of mistake or fraud³ or intervening changes in the facts or the law that clearly warrant a new look at the question.⁴

More specifically, it has been held that a motion should not be entertained or granted by a successor judge when the motion is of the same kind that has previously been denied by a predecessor.⁵ However, a successor judge acts properly in considering a second motion for dismissal despite the fact that a first motion asserting the same grounds has been denied by a predecessor judge where, in the interim, controlling law on the subject has been decided by an appellate court, and the appellate court decision constitutes changed circumstances justifying such reconsideration.⁶ In addition, if the grounds for relief asserted in the motion before the successor judge are factually and legally different from the motion brought before the predecessor judge, it has been held that the successor may entertain the motion.⁷

CUMULATIVE SUPPLEMENT

Cases:

Premeditated allegation was improperly tried in trial for attempted premeditated murder, such that defendant's conviction for attempted premeditated murder could not be sustained, since allegation had been previously dismissed by judge other than trial judge, and trial judge lacked ability to permit information to be amended to re-allege premeditation; prior ruling established that defendant was committed without reasonable or probable cause supporting premeditated allegation, state neither appealed ruling nor filed new accusatory pleading, and there was no suggestion in the record that reconsideration of prior ruling was sought or intended. [Cal. Penal Code §§ 187\(a\), 664, 995. People v. Saez, 237 Cal. App. 4th 1177, 189 Cal. Rptr. 3d 72 \(1st Dist. 2015\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 View that successor judge has authority, see § 181.
- 2 [Cal.—People v. Barros, 209 Cal. App. 4th 1581, 148 Cal. Rptr. 3d 105 \(1st Dist. 2012\).](#)
[Fla.—State v. Pablo-Ramirez, 61 So. 3d 488 \(Fla. 2d DCA 2011\).](#)
[La.—Daigle v. Merrill Lynch, 107 So. 3d 901 \(La. Ct. App. 3d Cir. 2013\).](#)
[Md.—Kent Island, LLC v. DiNapoli, 430 Md. 348, 61 A.3d 21 \(2013\).](#)
[N.J.—Little v. KIA Motors America, Inc., 425 N.J. Super. 82, 39 A.3d 930 \(App. Div. 2012\).](#)
[N.Y.—Grossman v. Composto-Longhi, 96 A.D.3d 1000, 948 N.Y.S.2d 95 \(2d Dep't 2012\).](#)
[N.C.—France v. France, 738 S.E.2d 180 \(N.C. Ct. App. 2012\), review denied, 740 S.E.2d 479 \(N.C. 2013\).](#)
[Or.—Oregonian Publishing Co., LLC v. Waller, 253 Or. App. 123, 293 P.3d 1046\(2012\), review denied, 353 Or. 714, 303 P.3d 943 \(2013\).](#)
[Pa.—Com. v. Weigle, 606 Pa. 234, 997 A.2d 306 \(2010\).](#)
[S.C.—Naruhn v. Alea London Ltd., 404 S.C. 337, 745 S.E.2d 90 \(2013\).](#)
Strongly disfavored
[Del.—New Castle County v. Pike Creek Recreational Services, LLC, 2013 WL 6923072 \(Del. Ch. 2013\).](#)
Public policy
For reasons of comity and public policy, trial judges should decline to reverse or modify other trial judges' rulings unless there is a highly persuasive reason for doing so.
[Cal.—People v. Quarterman, 202 Cal. App. 4th 1280, 136 Cal. Rptr. 3d 419 \(1st Dist. 2012\).](#)
- 3 [Fla.—Peterson v. Peterson, 715 So. 2d 977 \(Fla. 4th DCA 1998\), as clarified on denial of reh'g, \(Aug. 12, 1998\).](#)
- 4 [Ariz.—Cypress on Sunland Homeowners Ass'n v. Orlandini, 227 Ariz. 288, 257 P.3d 1168 \(Ct. App. Div. 1 2011\).](#)

N.C.—*France v. France*, 738 S.E.2d 180 (N.C. Ct. App. 2012), review denied, 740 S.E.2d 479 (N.C. 2013).

Pa.—*Riccio v. American Republic Ins. Co.*, 550 Pa. 254, 705 A.2d 422 (1997).

A.L.R. Library

Power of successor judge taking office during term time to vacate, set aside, or annul judgment entered by his or her predecessor, 51 A.L.R.5th 747.

5 Ariz.—*Lemons v. Superior Court of Gila County*, 141 Ariz. 502, 687 P.2d 1257 (1984).

Pa.—*Riccio v. American Republic Ins. Co.*, 550 Pa. 254, 705 A.2d 422 (1997).

6 Ariz.—*Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 288, 257 P.3d 1168 (Ct. App. Div. 1 2011); *Lemons v. Superior Court of Gila County*, 141 Ariz. 502, 687 P.2d 1257 (1984).

7 Ariz.—*Cypress on Sunland Homeowners Ass'n v. Orlandini*, 227 Ariz. 288, 257 P.3d 1168 (Ct. App. Div. 1 2011).

Colo.—*Sumler v. District Court, City and County of Denver*, 889 P.2d 50 (Colo. 1995).

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